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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/727,117	11/30/2000	Robert G. Arther	Mo-6049/MD-00-112-TG	2400

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BAYER CORPORATION
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EXAMINER

ROBINSON, ALLEN JAY

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 05/06/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/727,117

Applicant(s)

Arther

Examiner

Allen J. Robinson

Art Unit

1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on Apr 12, 2002

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-10 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-10 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☐ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 7 (is 4)

20) ☐ Other:

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As per a restriction requirement made April 12, 2002, Applicant elected without traverse (paper number 6) the synergistic combination of imidacloprid and permethrin.

The specific elected invention of the synergistic combination of imidacloprid and permethrin is clearly patentable distinct from another different and non-related synergistic combination such as the nicotiny l insecticidal compounds wherein they are non-related heterocyclic compounds in combination with different pyrethroids. The multitude of different synergistic combinations are non-related to each other, have different fields of search and can support separate patents. Therefore, the above restriction requirement is deemed proper, adhered to and made final. Cancellation of non-elected claims and subject matter from other claims is now required.

Claims 1-10 are acted upon on their merits to the extent that they read on the elected invention.

Claims 1 and 3-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 3-10 are indefinite in failing to set forth all relative proportions for all ingredients. Claims 9 and 10 are indefinite in failing to set forth how much active composition is

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employed. The insertion of functional language such as “synergistic effective amounts of” in the claims would overcome the above rejections.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sirinyan et al. (AC).

The Sirinyan et al. reference teaches that the claim designated imidacloprid compound is an old insecticide which may be combined with permethrin to control the same type of insects. See column 4, line 36; column 8, lines 1-15; and column 9, lines 1 and 2. The above reference fail to teach specific examples of the old insecticides together. However, one skilled in the art would find ample motivation from the prior art supra to combine the well known insecticides together, of known properties where the results obtained thereby are no more than the additive effects of the ingredients; particularly since the above prior art teaches the combination of known insecticides. In re Sussman, 1943 CD 518. The data in the specification is noted, but does not

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show unexpected and/or unobvious results for all the insects and acarids and for all the broad ranges claimed.

References AA and AB' are cited to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen J. Robinson whose telephone number is (703) 308-4524.

AJR
May 2, 2002


ALLEN J. ROBINSON
PRIMARY EXAMINER